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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 918

EVANSTON CAB CO., a corporation; SKOKIE RED TOP CAB CO., a corporation; LINCOLNWOOD RED TOP CAB CO., a corporation, *Petitioners,*

vs.

CITY OF CHICAGO, a municipal corporation; YELLOW CAB CO., a corporation; CHECKER TAXI CO., INC., a corporation; FLASH CAB CO., a corporation; PUBLIC TAXI SERVICE CO., a corporation; ABERNATHY TAXI ASSOCIATION, INC., a corporation; SOUTH SIDE CAB CO., a corporation; HIGHLAND CAB COMPANY, INC., a corporation; COMMERCIAL CAB CO., a corporation; BERTEL W. DAIGRE; AMERICAN UNITED CAB ASSOCIATION, an unincorporated association, JACK TAYLOR, individually, and as President of the Defendant American United Cab Association; PETE BARBERO, individually and as Secretary of the Defendant American United Cab Association; JOHN C. MELANIPHY; JAMES Y. CARTER; RAY SIMON; and THOMAS J. COONEY, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS YELLOW CAB COMPANY AND CHECKER TAXI COMPANY, INC., IN OPPOSITION TO CERTIORARI.

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THE GUNTHROP WARREN PRINTING COMPANY, CHICAGO

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SUPPLEMENTAL STATEMENT.

On April 20, 1964, a month after the instant petition was filed, this Court dismissed an appeal involving the same Chicago taxi ordinance that is assailed by petitioners in this case. *Yokes v. City of Chicago*, 28 Ill. 2d 475, *appeal dismissed per curiam*, 32 U. S. Law Week 3368 (No. 855, 1963 Term). The appellants in *Yokes* were cab driver employees of the very petitioners here, who were convicted for operating in Chicago without city taxi licenses, in violation of the ordinance.

In affirming the convictions, the Illinois Supreme Court sustained the ordinance as a valid police power measure (28 Ill. 2d at 478-82), and rejected the identical claim petitioners now urge under their second "Question Presented,"[1] *i.e.*, that the ordinance discriminates against taxi carriers based outside of Chicago and thus infringes Fourteenth Amendment due process and equal protection (petition, pp. 2, 19-30). This Court dismissed the appeal from that judgment "for want of a substantial federal question." 32 U. S. Law Week 3368.

Petitioners here, in addition to re-arguing the Fourteenth Amendment claim rejected in *Vokes, supra*, contend that the anti-trust laws are violated by the ordinance's restriction precluding non-city taxicabs from picking up passengers at O'Hare Airport except at the passenger's specific request (petition, pp. 2, 7-19). O'Hare Airport is within Chicago's city limits. Petitioners allege that this provision became law as the result of a "conspiracy" among the respondents to restrict or eliminate competition; they also contend that passengers going to and from O'Hare are in interstate commerce, for anti-trust law purposes.

The Court of Appeals affirmed dismissal of the complaint (325 F. 2d 907), on authority of the Illinois Supreme Court's decision in *Vokes v. City of Chicago, supra*, and this Court's decision in *United States v. Yellow Cab Co.*, 332 U. S. 218.

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1. Indeed, petitioners' second "Question Presented" (petition, p. 2) and their entire argument in support of it (petition, pp. 19-30) appear to have been reproduced verbatim from the Jurisdictional Statement (pp. 3, 8-26) in *Vokes v. City of Chicago* (No. 855).

QUESTION PRESENTED

Since this Court has so recently decided in *Yokes, supra*, that there is no substance to the identical claim of Fourteenth Amendment violation now urged under petitioners' second "Question Presented," we consider that question authoritatively closed and not in the case.

As for the other "Question Presented" by the petition (whether taxi riders to and from O'Hare Airport are in interstate commerce within the anti-trust law context), we believe the Court could neither reach nor resolve such question without *first answering affirmatively* the following question that is critical to petitioners' case, but which they wholly ignore:

> Does the complaint state a cause of action under the anti-trust laws, in light of this Court's holding in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U. S. 127?

REASONS FOR DENYING THE WRIT

The court below chose to test its determination of no anti-trust cause of action on the holding in *United States v. Yellow Cab Co.*, 332 U. S. 218, that passengers hiring local taxis before or after rail journeys are not in interstate commerce. Petitioners now seek certiorari on the plaint that *Yellow Cab* should be overruled.

We submit *Yellow Cab* was correctly decided, is sound law today, and has not been infringed by any subsequent case either in the labor field, the anti-trust field, or indeed, in any other field. Petitioners rely solely on labor law decisions (petition, pp. 7-19); but as the opinion below demonstrates, such cases are neither factually nor legally comparable to this one, and are thus inapplicable here (petition appendix, pp. 6-9). Petitioners cannot and do

not claim any conflict among circuits on this holding, nor do they show any similar ground or feature important enough to warrant certiorari.

But we believe there is another and even stronger reason why certiorari should be denied. The judgment below is not only supported by the commerce definition of *Yellow Cab*, but is also supported, independently and conclusively, by an unbroken line of decisions by this Court holding invulnerable to anti-trust assault any governmental action or legislation restraining, or even monopolizing, trade or commerce, *and* any efforts (concerted or otherwise) to influence the enactment or enforcement of such legislation. *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U. S. 127; *Parker* v. *Brown*, 317 U. S. 341; *United States* v. *Rock Royal Co-op.*, 307 U. S. 533; *Olsen* v. *Smith*, 195 U. S. 332; *Standard Oil Co.* v. *United States*, 221 U. S. 1; *Fletcher* v. *Peck*, 6 Cranch 87. Petitioners could not prevail here without overruling this line of cases, *plus* the *Yellow Cab* ruling.

The *Noerr* case, *supra*, most recent of the line, highlights the fatal weakness of petitioners' claim. There, several trucking companies complained that a group of railroads and others allied with them had violated the Sherman Act by conspiring to procure the adoption of laws and law enforcement practices destructive of the truckers' interstate business. The allegations were even stronger than petitioners' charges here, for it was alleged that the railroads had engaged in "vicious, corrupt, and fraudulent" practices designed solely to destroy the truckers; among other acts, the railroads were charged with having successfully enlisted the aid of the Governor of Pennsylvania to veto legislation favorable to the truckers. (365 U. S. at p. 129.)

This Court, in unanimously rejecting the truckers' complaint, held that combinations or conspiracies to influence

the passage or enforcement of laws restraining commerce are not within the ban of the Sherman Act. The Court declared (365 U. S. at pp. 135-36):

> "It has been recognized, at least since the landmark decision of this Court in *Standard Oil Co.* v. *United States* [221 U. S. 1], that the Sherman Act forbids only those trade restraints and monopolizations that are created or attempted by the acts of 'individuals or combinations of individuals or corporations.' Accordingly, it has been held that *where a restraint upon trade or monopolization is the result of valid governmental action, as opposed to private action, no violation of the Act can be made out.* . . .
>
> "We think it equally clear that the Sherman Act does not prohibit two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly." (Emphasis added.)

This holding, we submit, is precisely applicable here. The sum of petitioners' complaint is that respondents combined and conspired to procure passage of a law restricting the operations at O'Hare Airport of taxis not licensed or based in Chicago.[2] But O'Hare is within the city limits of Chicago (petition appendix, pp. 1-2), and is therefore subject to Chicago's police power regulation; the

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2. It of course makes no difference that the governmental action here questioned is in the form of an ordinance rather than a State enactment; it is "well settled that municipal ordinances adopted under state authority constitute state action . . . ." *Lovell* v. *Griffin*, 303 U. S. 444, 450; *Cuyahoga River Power Co.* v. *Akron*, 240 U. S. 462; *Home Tel. & Tel. Co.* v. *Los Angeles*, 227 U. S. 278. Also without significance is the fact that the complaint names the City and its officials as co-defendants; this adds nothing more to the complaint than the naming of the Governor of Pennsylvania as a co-defendant would have in the *Noerr* case. *See Parker* v. *Brown*, 317 U. S. 341; *Olsen* v. *Smith*, 195 U. S. 332; *Tennen* v. *Brandhove*, 341 U. S. 367.

restriction against pick up of passengers there by non-Chicago cabs is no more stringent (and in fact is much less so) than the similar prohibition prevailing throughout the rest of the city (see Municipal Code of Chicago, ch. 28, §§ 28-2, 28-3).

The city-wide prohibition against petitioners' cabs was upheld as a valid police power regulation in the *Yokes* case (28 Ill. 2d 475) and this Court found no substantial federal question in an appeal from that holding (32 U. S. Law Week 3368; see Statement, *supra*). Thus, the taxicab restriction here attacked has been judicially determined to be a "valid governmental action," and under *Noerr*, *supra*, "no violation of the [Sherman] Act can be made out." 365 U. S. at p. 136. See, also, *Parker* v. *Brown*, 317 U. S. 341; *United States* v. *Rock Royal Co-op*, 307 U. S. 533; *Olsen* v. *Smith*, 195 U. S. 332. Cf. *Tenney* v. *Brandhove*, 341 U. S. 367; *Fletcher* v. *Peck*, 6 Cranch 87.

The soundness of *Noerr* is signally demonstrated when mirrored against the petitioners' attempt here to nullify legislation that displeases them. In Chicago, as in most cities, taxicabs are vitally important to the public, and are accordingly licensed and subjected to rigorous legislative controls over rates, loads, financial responsibility, safety of vehicles, fitness of drivers, and many other factors. (Municipal Code of Chicago, ch. 28, §§ 28-1—28-32.) If unlicensed, non-city taxicabs could invade the city and compete with city-based cabs, the entire regulatory framework, as well as the public safety, would be seriously jeopardized. This is exactly what petitioners seek

3. The O'Hare provision of the ordinance, unlike the city-wide restriction, specifically allows non-city cabs to pick up passengers at O'Hare whenever the passenger, or his agent, has requested such a pick up by "letter, telegram or telephone." (Municipal Code of Chicago, ch. 28, § 28-28.) There is no restriction preventing non-city cabs from delivering passengers at O'Hare.

to accomplish here under the cloak of an anti-trust action, and it is precisely what the *Noerr* case (and its forerunners) forbid.

CONCLUSION

For the foregoing reasons we submit the petition for certiorari should be denied.

Respectfully submitted,

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